

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:92CR14
)	
v.)	
)	
CHRISTOPHER SCOTT,)	MEMORANDUM OPINION
)	
Defendant.)	
_____)	

This matter is before the Court on defendant's motion under 18 U.S.C. § 3582(c)(2) to modify the terms of sentence (Filing No. 1023). This motion was filed on October 6, 2005.

The defendant Christopher Scott was convicted on February 17, 1993. His direct appeal was denied by the Eighth Circuit Court of Appeals on July 11, 1994. Subsequently defendant filed a motion under 28 U.S.C. § 2255 which was denied on January 21, 1998.

Section 3582(c)(2) allows a court to modify a term of imprisonment which has been imposed when the defendant was sentenced to a term of imprisonment based on a sentencing range that has since been lowered by the sentencing commission pursuant to 28 U.S.C. § 944(o). Under these circumstances a court is not required to reduce a sentence but may do so.

Here the defendant has failed to produce evidence, and the Court on its own volition has failed to find that defendant's

sentence was based on a sentencing range that has subsequently been lowered. Thus, this motion will be denied.

The Court notes that defendant also urges the Court to find that the United States Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), which made sentencing guidelines advisory rather than mandatory, is equivalent to a lowering of the sentencing guidelines by the sentencing commission. The Eleventh Circuit Court of Appeals has stated, "*Booker* is a Supreme Court decision, not a retroactively applicable guideline amendment by the Sentencing Commission. Therefore, *Booker* is inapplicable to § 3582(c)(2) motions." *United States v. Moreno*, 421 F.3d 1217, 1220 (11th Cir. 2005). Furthermore, the Eighth Circuit Court of Appeals has concluded that *Booker* does not apply to cases on collateral appeal. See *Never Misses A Shot v. United States*, 413 F.3d 781, 783-84 (8th Cir. 2005)(per curiam). Thus, the issue which defendant seeks to raise in this motion is without merit. A separate order will be entered in accordance with this memorandum opinion.

DATED this 23rd day of December, 2005.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court